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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TASH HEPTING, GREGORY HICKS,
CAROLYN JEWEL and ERIK KNUTZEN, on
Behalf of Themselves and All Others Similarly
Situated,

No. C-06-0672-VRW

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION TO EXTEND PAGE
LIMIT FOR PLAINTIFF'S OPPOSITION
TO MOTION TO DISMISS AMENDED
COMPLAINT BY DEFENDANT AT&T,
CORP.; MEMORANDUM OF POINTS
AND AUTHORITIES**

Courtroom: 6, 17th Floor
Judge: The Hon. Vaughn R. Walker,
Chief Judge

1 PLEASE TAKE NOTICE that plaintiffs Tash Hepting, Gregory Hicks, Carolyn Jewel and
2 Erik Knutzen will and hereby do move the Court pursuant to N.D. Cal. Civil Local Rule 7-11 for
3 an order allowing Plaintiffs to exceed the 25-page limit set forth in Civil Local Rule 7-4 by ten
4 pages for Plaintiffs' Memorandum of Points and Authorities in support of their Opposition to
5 Motion to Dismiss Amended Complaint by Defendant AT&T, Corporation. This motion is based
6 on this Notice of Motion and Motion, the Memorandum of Points and Authorities below, the
7 Declaration of Michael M. Markman filed herewith, and Plaintiffs' Opposition to Motion to
8 Dismiss Amended Complaint by Defendant AT&T, Corp. and all associated papers.

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 Plaintiffs seek leave of the Court to file a memorandum of points and authorities of 29
11 pages in opposition to the motion to dismiss the amended complaint filed by AT&T Corporation in
12 this action. Plaintiffs make this request in an effort to ensure that they are able to set forth a
13 thorough argument to assist the Court regarding the multiple and at times complex issues raised by
14 AT&T Corp.'s attempt to dismiss this action at the pleading stage. Plaintiffs request that the Civil
15 Local Rule 7-4 limit of 25 pages be waived and that plaintiffs be permitted to file a brief of 29
16 pages.

17 **I. ARGUMENT**

18 In its 25-page Motion to Dismiss, AT&T Corp. ("AT&T") advances multiple arguments in
19 an effort to dismiss this case at the pleading stage. AT&T advances three distinct (and, Plaintiffs
20 submit, novel) theories of immunity for the otherwise wrongful activities set forth in the Amended
21 Complaint – immunity under two statutes, common-law immunity, and qualified immunity. These
22 arguments raise critically important issues that implicate Plaintiffs' constitutional rights, as well as
23 the rights of others to file suit against a telecommunications company based on unlawful electronic
24 surveillance. AT&T's theory of statutory immunity also requires a discussion of a sometimes
25 complicated statutory regime. AT&T simultaneously attacks Plaintiffs' standing, requiring a
26 detailed discussion of the facts supporting Plaintiffs' injuries and the causation underlying them.
27 And, AT&T also asks the Court to apply a heightened pleading requirement that would require
28 Plaintiffs to plead the non-existence of an authorization by the government in order to state a claim.

This case raises fundamental issues concerning the constitutional rights of Plaintiffs, and a class that may number in the hundreds of thousands, concerning AT&T's unlawful electronic surveillance of an enormous number of communications (including internet messages and telephone conversations), as well as a massive amount of data concerning communications. Plaintiffs seek only an additional four pages in which to brief legal argument concerning the multiple issues raised by AT&T's motion, due to the number and complexity of the issues they have raised. Plaintiffs had hoped that the parties could reach an agreement regarding the limited relief now sought from the 25-page brief size set by the Civil Local Rules, but AT&T refused to consent to Plaintiffs' reasonable request.

II. CONCLUSION

For the above reasons, plaintiffs request that this Court permit Plaintiffs to file a brief of up to 29 pages.

DATED: June 6, 2006

Respectfully submitted,

ELECTRONIC FRONTIER FOUNDATION

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CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the following non-CM/ECF participants:

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